

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the matter of	)	
	)	
Empowering Consumers to Avoid Bill shock	)	CG Docket No. 10-207
	)	
Consumer Information and Disclosure	)	CG Docket No. 09-158

**COMMENTS OF TRACFONE WIRELESS, INC.**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby submits its initial comments in response to the Commission’s notice of proposed rulemaking in this proceeding.<sup>1</sup>

**INTRODUCTION**

In the NPRM, the Commission has proposed a series of warning requirements which wireless carriers would be obligated to use to notify consumers when they are about to exceed allotments of minutes included in the consumers’ service plans, or when consumers are about to incur significant charges for other reasons including, for example, roaming charges and international calling charges, as well as data service (*e.g.*, SMS text messaging) in excess of plan limits.

No doubt, the comments filed in this proceeding will reflect a sharp divergence of opinion. Much of the commercial wireless service industry will assert quite reasonably that the market is competitive and that market forces are sufficient to discipline carrier behavior and thereby make government regulation of customer warnings unnecessary. Consumer advocates will assert -- also quite reasonably -- that there have been problems with consumers receiving invoices containing unanticipated charges -- often substantial charges, and that some government intervention may be needed to prevent “bill shock.” Without addressing the respective merits of

---

<sup>1</sup> Empowering Consumers to Avoid Bill Shock, et al (Notice of Proposed Rulemaking), FCC 10-180, released October 14, 2010 (“Notice” or “NPRM”).

those competing viewpoints, TracFone respectfully urges the Commission to recognize that the issues raised in this proceeding and the proposed remedial actions involve bill shock -- unanticipated charges on consumer bills. Those concerns and proposed remedies are not relevant to non-billed services, specifically prepaid wireless services. As will be described herein, prepaid wireless services are consumers' ultimate weapon to prevent bill shock.

**I. A Description of TracFone and the Prepaid Wireless Industry**

With more than 17 million customers using its TracFone®, NET10®, Straight Talk®, and SafeLink Wireless® brands, TracFone is the largest provider of prepaid wireless services in the United States. TracFone is itself a subsidiary of America Movil -- one of the largest wireless telecommunications companies in the world, serving more than 260 million customers throughout Latin America and the Caribbean regions. A substantial portion of America Movil's customers (more than 216 million) are prepaid service customers. In short, provision of prepaid wireless services is in TracFone's "DNA."

TracFone's pay-as-you-go service is especially popular among lower income consumers, consumers who want to carefully manage their telecommunications expenditures, and consumers to whom other telecommunications services -- particularly wireless services -- are not available or, if available, only at unaffordable rates. With TracFone service, there are no contracts, no volume or duration requirements, no activation fees, no credit checks, no overcharges or charges for unwanted services, and no risk of disconnection for non-payment. Consumers purchase as much wireless airtime as they need or can afford when they need it. They do so by purchasing TracFone (or NET10) airtime cards from independent retail vendors, or directly from TracFone through its Internet website ([www.tracfone.com](http://www.tracfone.com)). The amount of wireless airtime available to consumers is the amount stated on the airtime card. If the card states 100 minutes, the customer

receives 100 minutes (sometimes more when the company offers promotions). There are no hidden or otherwise unexplained or unexpected charges or surcharges which reduce the amount of airtime available to consumers below that which was indicated to consumers at the time of purchase.<sup>2</sup>

In addition, TracFone handsets contain proprietary software which enables consumers to view their remaining prepaid usage account balances on the handset screen. For example, if a customer purchases 100 minutes of wireless airtime and uses twenty minutes of that airtime, when the customer next views the handset screen, it will show a balance of 80 remaining minutes of airtime.

While TracFone is the largest provider of prepaid wireless service in the nation, and is the largest wireless carrier which provides only prepaid services, it is not the only provider of prepaid wireless services. Indeed, every major wireless carrier, including, for example, Verizon Wireless, AT&T Mobility, Sprint Nextel, and T-Mobile offer prepaid services. Other carriers, similarly to TracFone, provide prepaid services exclusively or at least predominantly. While each provider's prepaid services have unique characteristics and attributes, they are similar to each other and are fundamentally dissimilar to post-paid or billed wireless services.

A recent development in the prepaid wireless industry segment has been the advent of quantity of service or unlimited service plans provided on a prepaid basis. TracFone has entered that market segment with a product called Straight Talk®. Straight Talk® is marketed jointly by

---

<sup>2</sup> Based on its extensive experience providing affordable wireless service to low-income, including credit-challenged, consumers, TracFone has sought and obtained designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e) of the Communications Act of 1934, as amended. It has been designated as an ETC in 35 states and currently provides its SafeLink Wireless® Lifeline service to approximately 3.2 million qualified low-income households. Those enrolled Lifeline customers receive free wireless handsets and up to 250 minutes of wireless airtime per month.

TracFone and by Walmart. The service is available only at Walmart stores. There are two Straight Talk® plans -- The All You Need plan and the Unlimited plan. With the All You Need plan, consumers pay \$30.00 for one month of service (they pay in advance) and receive 1,000 minutes of wireless airtime for voice telephone calls, 1,000 SMS text or MMS messages, and 30 MB of mobile web data service. Customers electing the Unlimited plan pay \$45.00 for one month of service in advance and receive unlimited voice calling, unlimited SMS and MMS messages, and unlimited mobile web data service. Straight Talk® customers under either plan may purchase Straight Talk® airtime cards at Walmart and contact TracFone to activate those cards, or they may have each month's service charged by TracFone to a credit or debit card at the beginning of each month.

**II. Prepaid Wireless Service is not Billed Service. There is no Risk of Bill Shock Since There Is no Risk of Overcharges or Unexpected Billed Charges.**

In the NPRM, the Commission asks whether prepaid mobile services should be exempt from any usage alert requirements that might evolve to address bill shock.<sup>3</sup> There is neither any need nor public interest reason to impose bill shock-preventing alert requirements on prepaid wireless services. Since consumers of such services are not billed for those services and never receive post service invoices, there is no risk that any prepaid wireless service customer will ever receive a bill containing unanticipated charges. Concerns about bill shock are non-existent with prepaid wireless services.

Whether there is a need to “exempt” prepaid services from any bill shock regulations to be promulgated would depend on how those regulations are crafted. If they are written so as to provide warnings to consumers who may be subject to a risk of unanticipated billed charges, there would be no need for an exemption since the regulations themselves would not be

---

<sup>3</sup> Notice, ¶ 25.

applicable. If, by their express terms, the bill shock rules are applicable to billed services, they would not be applicable to non-billed, prepaid services.

In order to avoid the unintended consequence of subjecting prepaid wireless services to a regulation promulgated to avoid bill shock, TracFone recommends that the Commission define the term “mobile service provider” in a manner which limits the scope of the rule to preventing unexpected charges for billed services. Appendix A to the Notice sets forth proposed rules for public comment. Subsection (b) of the proposed rule leaves a place for a definition of “mobile service provider.” TracFone proposes the following definition of mobile service provider to be incorporated in that rule: “*Mobile service provider* for purposes of this section refers to providers of commercial mobile radio service as that term is defined at 47 C.F.R. § 20.3, but only with respect to such providers’ commercial mobile radio services which are provided on a post-paid or billed in arrears basis.”

The Notice states that some consumer groups -- specifically, the National Association of State Utility Consumer Advocates -- have suggested that usage alerts would help prepaid customers avoid the need to pay for additional minutes once they reach their prepaid limit.<sup>4</sup> This suggestion does not withstand analysis and should be summarily rejected for several reasons. First, usage alerts would not enable prepaid wireless customers to avoid the need to pay for additional minutes. With prepaid services, including those of TracFone, once a consumer has depleted his/her account of prepaid minutes of airtime, the consumer may no longer initiate or receive calls until additional minutes are purchased and added to the consumer’s account.<sup>5</sup> If the

---

<sup>4</sup> *Id.*

<sup>5</sup> Consumers may use their prepaid handsets to make emergency service calls to 911, even if they have no remaining airtime.

consumers wish to continue to use their handsets and wireless service, additional airtime must be purchased.

Second, there is no need for a requirement that providers of prepaid services deliver usage alerts to consumers whose airtime balances are nearing depletion. Those providers are strongly incented to do so for business reasons and many, including TracFone, already provide such alerts. The prepaid wireless business model is strongly dependent on customers purchasing prepaid providers' handsets (often at subsidized prices), continuing to use the providers' service, and regularly adding airtime. It is in TracFone's and every other prepaid wireless provider's economic interest to provide prepaid consumers with notifications that the consumers' airtime balances are getting close to exhaustion so that the consumers may purchase additional airtime. TracFone attempts to contact its customers by telephone, SMS text message, or through other means, to remind the customers that their remaining balance of prepaid minutes of airtime is nearing expiration and that they will soon need to purchase additional airtime in order to continue to use the service beyond that expiration date. In addition, TracFone handsets deliver a beep tone to customers when they are down to the last 10 minutes of airtime. In short, given the significant financial incentives on prepaid providers to notify their customers about remaining airtime and the fact that most providers currently act on those incentives, promulgation of a rule requiring them to do so would be unnecessary and unwise.

The NPRM also requests that commenters discuss the need for such alerts, both with respect to pay-as-you-go services and their unlimited services. As described in the preceding section of these comments, TracFone has entered the unlimited services segment of the prepaid market through its Straight Talk® offerings. TracFone's Straight Talk® plans are pay-as-you-go plans. Consumers may either purchase a plan which provides 1,000 minutes of use within a

single month or a plan which provides unlimited use within a single month. Either way, the consumer must purchase an additional Straight Talk® card to acquire wireless airtime for any succeeding month.

As with its other pay-as-you-go plans (including TracFone® and NET10®), there would be no benefit from mandating usage alerts for its large quantity or unlimited Straight Talk® plans. While the All You Need plan provides a finite quantity of monthly minutes, that quantity is quite high -- 1,000 minutes. As with its pay-as-you-go plans, it is not in TracFone's interest to have All You Need plan customers exhaust their 1,000 prepaid minutes before the end of the month. For that reason, TracFone notifies those customers when they are near exhaustion. More importantly, under the Unlimited Plan, customers never exhaust their supply of minutes or data. The only limitation in that plan is the passage of time since the plan is purchased and provided on a monthly basis. Therefore, the only information which the consumer needs to know is the date on which the consumer's month of service ends. That date is one month after the activation date. It is not unreasonable for consumers to keep track of the date that their one month of service begins and the date on which it ends, without obligating service providers to remind consumers that the month is nearly over.

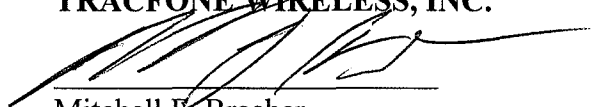
## **CONCLUSION**

The Commission's concerns about consumer dissatisfaction with unanticipated charges on their wireless service bills is understandable. The incidence of such customer experiences is well-documented in the Notice. Whether or not the Commission concludes that bill shock rules should be adopted, it is important to recognize that the conduct and complaints which led to this proceeding all involved carrier billing practices, and have nothing to do with non-billed

services.<sup>6</sup> In fact, prepaid services are the antithesis of bill shock. With prepaid services, customers know in advance how much they will pay and how much service they will receive. No customer will ever be overcharged on a bill because there are no bills. No customer will ever be required to pay for anything other than the amount of wireless service which the customer desires and which the customer can afford. Whether or not the Commission promulgates rules in this proceeding, the availability of prepaid wireless services such as those provided by TracFone and described in these comments, is consumers' best protection against unexpected charges for wireless services and bill shock.

Respectfully submitted,

**TRACFONE WIRELESS, INC.**



Mitchell F. Brecher  
GREENBERG TRAURIG, LLP  
2101 L Street, NW  
Suite 1000  
Washington, DC 20037  
(202) 331-3100

*Its Attorneys*

January 10, 2011

---

<sup>6</sup> Examples of such carrier billing practices are identified in a Commission white paper issued one day prior to issuance of the NPRM. See Federal Communications Commission Consumer and Governmental Affairs Bureau White Paper on Bill Shock, released October 13, 2010.